

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN DAVID McGOVERN, MC
EQUIPMENT HOLDINGS, LLC,

Defendants.

CR-16-22-GF-BMM

ORDER

Defendants have requested that the Court clarify the parameters of the anticipated testimony of the United States's witness, Special Agent Joseph Waller. Defendants have cited three cases to the Court in a filed brief following the Rule 17.1 conference that address concerns about a law enforcement officer who testifies as both a lay and an expert witness. (Doc. 146.) The Court has reviewed the cases. As the Court understands, Special Agent Waller will testify as a lay witness and offer his lay opinion, as permitted under Federal Rule of Evidence 701.

IT IS ORDERED that Special Agent Waller may testify as a lay witness and offer his lay opinion. The United States must inform the Court in advance, however, if Waller will be offering any testimony that would fall under Federal Rule of Evidence 702 regarding an expert witness. The Court may need to assess Waller's ability to provide any expert testimony pursuant to *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). The Court also may need to instruct the jury about the proposed testimony. Further, it will be incumbent upon the United States to lay the proper foundation for any expert testimony. The United States also must advise the jury during trial when Special Agent Waller is testifying as an expert and when he is testifying as a lay witness. The Court will make any further necessary rulings during the course of the trial.

DATED this 9th day of February, 2017.



Brian Morris
United States District Court Judge